



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 12, 2004

Ms. Maleshia B. Farmer
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2004-6842

Dear Ms. Farmer:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 207077.

The City of Fort Worth (the "city") received a request for information regarding the Fort Worth Convention and Visitors Bureau (the "bureau"), including employee expense reports, staff schedules, sales managers projected book goals, and actual bookings. Based on the reasoning in *Baytown Sun v. City of Mont Belvieu*, No. 14-03-00625-CV (Tex.App.—Houston [14th Dist.], June 1, 2004, n.p.h.), you acknowledge that the city has a right of access to the requested information maintained by the bureau. See Gov't Code § 552.002(a). You claim, however, that the requested information is excepted from disclosure under sections 552.101, 552.102, 552.104, 552.110, 552.131, and 552.136 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.¹

Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 683-85 (Tex. 1976) for information claimed to be protected under the doctrine of

¹We note you submitted the information you now seek to withhold in conjunction with a previous request for a decision from this office (ID # 200134) that we closed due to pending litigation. See *Baytown Sun v. City of Mont Belvieu*, No. 14-03-00625-CV (Tex.App.—Houston [14th Dist.], June 1, 2004, n.p.h.).

common law privacy as incorporated by section 552.101 of the Act. Accordingly, we will consider your section 552.101 and section 552.102 claims together.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Id.* at 685. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found that the following types of information are excepted from required public disclosure under common law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). We have marked the information that is confidential under common law privacy, and that must be withheld under sections 552.101 and 552.102.

You also assert that certain information in Exhibit E and all of Exhibit F is excepted from release under section 552.104 of the Government Code. Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." This exception protects a governmental body's interests in connection with competitive bidding and in certain other competitive situations. *See* Open Records Decision No. 593 (1991) (construing statutory predecessor). This office has held that a governmental body may seek protection as a competitor in the marketplace under section 552.104 and avail itself of the "competitive advantage" aspect of this exception if it can satisfy two criteria. First, the governmental body must demonstrate that it has specific marketplace interests. *Id.* at 3. Second, the governmental body must demonstrate a specific threat of actual or potential harm to its interests in a particular competitive situation. *Id.* at 5. Thus, the question of whether the release of particular information will harm a governmental body's legitimate interests as a competitor in a marketplace depends on the sufficiency of the governmental body's demonstration of the prospect of specific harm to its marketplace interests in a particular competitive situation. *Id.* at 10. A general allegation of a remote possibility of harm is not sufficient. *See* Open Records Decision No. 514 at 2 (1988). You state the release of the submitted information "could give competing cities a definite business advantage over the Bureau" and "could deprive the Bureau of countless time and expense devoted to gathering

the information and organizing it in a manner to place bids for business.” The bureau also asserts the following arguments:

The Bureau is facing strong competition with the neighboring cities and since the names of the groups are fully disclosed, possible solicitation of business by competitors may occur. . . . Even if the bookings have been closed or signed, there are some provisions in their contracts that will waive any penalty from cancellation – if made within a certain time frame.

Based on your arguments and our review of the submitted information, we find you have demonstrated the bureau has specific marketplace interests that would be harmed if certain information in Exhibit E was released to the public; therefore, the information in Exhibit E pertaining to the bureau’s customers, which we have marked, is excepted from disclosure under section 552.104. However, neither you nor the bureau has demonstrated that release of the remaining information in Exhibits E and F would potentially harm the bureau’s competitive interests. Therefore, none of the remaining information is excepted from disclosure under section 552.104.

You also assert that certain information in Exhibit E and all of Exhibit F is excepted from release under section 552.110 of the Government Code. Section 552.110 provides as follows:

- (a) A trade secret obtained from a person and privileged or confidential by statute or judicial decision is excepted from the requirements of Section 552.021.
- (b) Commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained is excepted from the requirements of Section 552.021.

Section 552.110 protects the competitive interests of the person or entity from whom the information was obtained; thus, section 552.110 only protects the interests of third parties, not the interests of a governmental body. Because the submitted information was not submitted by third parties, but rather was compiled by the bureau itself, we conclude that section 552.110 does not apply to the submitted information.

You also assert that certain information in Exhibit E and all of Exhibit F is excepted from release under section 552.131 of the Government Code. Section 552.131(a) excepts from public disclosure a business prospect’s trade secret or commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to

have locate, stay, or expand in or near the governmental body's territory. Gov't Code § 552.131(a). Section 552.131(b) protects information about a financial or other incentive that is being offered to a business prospect by a governmental body "[u]nless and until an agreement is made with the business prospect." Section 552.131(a) only protects the proprietary information of a third party, not a governmental body. On review, we find you have not established that any of the information at issue relates to a financial or other incentive that is being offered to a business prospect by the bureau, the city, or another person. *See* Gov't Code § 552.103(b). Therefore, none of the information at issue is excepted from disclosure under section 552.131 of the Government Code.

Finally, we note that the remaining information contains credit card and bank account numbers. Section 552.136 of the Government Code states "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. Therefore, you must withhold the credit card and bank account numbers that we have marked under section 552.136.

To summarize, (1) information made confidential under common law privacy must be withheld under sections 552.101 and 552.102, (2) information regarding the bureau's customers is excepted from release under section 552.104, and (3) the credit card and bank account numbers must be withheld under section 552.136. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records

will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/seg

Ref: ID# 207077

Enc. Submitted documents

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